

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 1, 2004

RICHARD LYNN NORTON v. STATE OF TENNESSEE

Appeal from the Chancery Court for Greene County
No. 20030061 William H. Inman, Senior Judge

No. E2003-02596-COA-R3-CV - FILED OCTOBER 18, 2004

Richard Lynn Norton (“Mr. Norton”) is incarcerated pursuant to a conviction for a drug offense. Mr. Norton seeks a writ of mandamus to obtain his release and to arrest and prosecute the trial judge and the prosecuting attorney in his criminal case. The Trial Court held that the writ of mandamus is not available to redress Mr. Norton’s grievances. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J. and SHARON G. LEE, J., joined.

Richard Lynn Norton, Clifton, Tennessee, pro se Appellant.

Paul G. Summers, Attorney General & Reporter, and John H. Bledsoe, Assistant Attorney General, for the Appellee, State of Tennessee.

OPINION

Background

Mr. Norton is incarcerated after being convicted and sentenced for a drug offense. Mr. Norton alleges double jeopardy because, as argued by Mr. Norton, the presentment accused him of both selling and delivering the same drug and a defendant cannot be convicted of both acts. He also alleges that the presentment violated his rights of due process and equal protection because it was altered to remove the name of a co-defendant. Mr. Norton sought a writ of mandamus requiring

the State to release him and to arrest and prosecute trial court Judge James E. Beckner and prosecuting attorney Eric Christiansen.

The Trial Court held that Mr. Norton's only recourse, if he has any, is by way of post-conviction relief and that a writ of mandamus is not available to redress Mr. Norton's alleged grievances. The Trial Court denied Mr. Norton's petition for a writ of mandamus. Mr. Norton appeals to this Court.

Discussion

While Mr. Norton raises three issues on appeal, the dispositive issue is whether the Trial Court erred in denying Mr. Norton's petition for a writ of mandamus.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Our Supreme Court reiterated the long-standing rule regarding the writ of mandamus in the 1995 case of *Paduch v. City of Johnson City*, stating:

For an act to be enforced by a writ of mandamus, the act must be purely "ministerial." *Peerless Construction Co. v. Bass*, 158 Tenn. 518, 520, 14 S.W.2d 732 (1929). If the right to have the act performed is doubtful, the right must be first established in some other form of action. Mandamus is a summary remedy, extraordinary in its nature, and to be applied only when a right has been clearly established. *Peerless*, 14 S.W.2d at 733.

Paduch v. City of Johnson City, 896 S.W.2d 767, 769-70 (Tenn. 1995) (quoting *Hackett v. Smith County*, 807 S.W.2d 695, 698 (Tenn. Ct. App. 1990)). "The office of mandamus is to execute, not adjudicate. It does not ascertain or adjust mutual claims or rights between the parties." *Moore v. Wyeth Chandler, Mayor*, 675 S.W.2d 153, 153 (Tenn. 1984) (quoting *Peerless Constr. Co. v. Bass*, 14 S.W.2d 732, 732 (Tenn. 1929)).

The acts Mr. Norton seeks to have performed are not purely ministerial. Mr. Norton has not established through some other action either a right to be released or a right to have trial court Judge James E. Beckner and prosecuting attorney Eric Christiansen arrested and prosecuted. As Mr. Norton has not established these rights, the writ of mandamus is not available.

We affirm the Trial Court's holding denying Mr. Norton's petition for a writ of mandamus.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Richard Lynn Norton.

D. MICHAEL SWINEY, JUDGE